Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 10th July, 2008 (Ashada 19, 1930)

SERIES II No. 15

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Notification

No. 28/18/2007-LAB/75

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 27-12-2007 in reference No. IT/11/2006 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 10th January, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/11/2006

Surendra Naik,
Avanti Nagar,
VI Tisk Usgao,
Ponda, Goa. … Workman/Party I

V/s

The General Manager,
M/s. Fomento Resort Pvt. Ltd.,
Vaiguinim Beach,
Dona Paula, Goa. … Employer/Party II

Party I/Workman is represented by P. Gaonkar.

Party II/Employer is represented by Adv. G. B. Kamat.

AWARD

(Passed on this 27th day of December, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:-

The Government of Goa in exercise of powers conferred on it by Section 10(1)(c) of the said Act, 1947, under order dated 24-2-2006 has referred to the Labour Court II following dispute for adjudication:

"(1) Whether the action of the management of M/s. Cidade de Goa, unit of M/s. Fomento Resort and Hotel Limited, Dona Paula, Goa, in terminating the services of its workmen, Shri Surendra Naik, Resort Attendant, with effect from 19-2-2004 is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. In response to notices, both parties put their appearance in the Labour Court-II. The Party I/Workman (the said workman) presented his claim statement on 18-4-2006 at Exb. 4. It appears from claim statement that the Party II is an establishment in hotel business engaged by M/s. Fomento Resorts and Hotel Ltd., Vainguinim Beach, Goa. There are near about 500 workers in establishment of Party II. Out of these 500 workers, 200 are permanent. The said workman was employed in establishment of Party II as attendant with effect from 1-7-1992. He could not attend his duty in the month of November, 2003 due to sickness of his wife and son. He had sent information in this regard to the Party II. By letter dated 29-1-2004, supported with medical certificates of sickness of his wife and of son he requested the Party II to allow him to join his duty. The Party II turned down his request. The Party II under letter dated 19-2-2004 informed him that his dues are settled and thereby terminated his services. The Party II before terminating his services did not hold departmental inquiry against him, did not follow principles

of natural justice, did not seek permission from appropriate authority and did not comply with provisions of the said Act, 1947. Termination of his service is illegal, unjustified and is bad in law. Since after termination of his service he is not gainfully employed. Therefore, by presenting the claim statement he entreated for declaration that the termination of his service is illegal, improper and unjustified, and for direction to the employer to reinstate him with full back wages and with continuity in the services.

3. The Party II filed its written statement on 28-6-2006 at Exb. 5 and thereby resisted the claim made out by the said workman. According to the Party II, there is no termination of services of the Party II. Therefore, the reference is illegal, bad-in-law and not maintainable. The said workman was initially appointed as a Trainee Resort Attendant in its House Keeping Department for period from 1-7-1992 to 31-12-1992 on monthly stipend of Rs. 600/-. Thereafter, he was appointed as General Worker in Grade-I on probation from 1-11-1992 to 30-4-1993 on consolidated salary Rs. 800/- per month. He was confirmed in the services on 1-5-1993. His services are governed by Standing Orders and Service Rules known as House Rules/Service Rules. He remained absent without permission or without giving intimation during period from 1-11-2003 to 28-11-2003. Therefore, it sent letter dated 29-11-2003 and informed him that he is absent for more than 10 days without prior permission or intimation. By this letter he was informed to report on his duty within next 10 days, failing of which, it would be deemed that he has left the services with effect from 1-11-2003. Inspite of receipt of this letter he did not join his duty within given period of ten days with result that he is deemed to have left the services from the date of his absence, that is, with effect from 1-11-2003 in terms of Rule 13(5) of the House Rules/Service Rules. It was not necessary to pass any further order or to take any further action against him. A cheque dated 3-2-2004 of Rs. 37,946.35 ps. towards full and final settlement of his dues consisting of leave wages and gratuity is sent to him along with letter dated 19-2-2004. It is the said workman who has brought contract of his employment to an end by remaining absent with effect from 1-11-2003 without prior permission or intimation. There is no positive act on its part to bring contract of his employment to an end. On these and above grounds it has prayed for rejection of the reference.

4. The said workman submitted rejoinder on 19-7-2006 at Exb. 6. To put in nutshell, he has denied in the rejoinder all contentions which are raised by the Party II in its written statement and which are adverse to his interest. It is needless to reiterate the denials.

5. On basis of pleading, the then learned Presiding Officer of Labour Court-II framed issues on 26-7-2006 at Exb. 7. The issues are recast by me on 18-6-2007 at Exb. 13. The recast issues are as follows:

1 Whether the Party II terminated services of the Party I, w.e.f. 19-2-2004 ?

2 Whether the action of Party II in termination services of Party I is legal and justified ?

3 Whether the order of the reference is bad in law ?

4 Whether the Party I is entitled to relief as prayed for ?

5 What Award ?

6. My findings on the above issues are as follows:

Issue No. 1: In affirmative.
Issue No. 2: In affirmative.
Issue No. 3: In negative.
Issue No. 4: In negative.
Issue No. 5: As per final Order.

REASONS

7. *Issue No. 1:* Admittedly, the Party II is a hotel establishment situated at Dona Paula, Goa. It is the unit of company known as M/s. Fomento Resorts and Hotels Ltd., registered under Indian Companies Act, 1956. Registered office of the company is situated at Vainguinim Beach which is also at Dona Paula, Panaji, Goa. The said workman was initially appointed as Trainee Resort Attendant in House Keeping Department of Party II with effect from 1st July, 1992 to 31-12-1992. Thereafter, he came to be appointed as General Worker in Grade I in establishment of Party II on probation for period from 1-11-1992 to 30-4-1993. Copy of letter whereunder he came to be appointed as General Worker in Grade I is at Exb. 14. Copy of the letter further shows that his services were governed by the Standing Orders, Rules, Regulations and Instructions for the time being in force as displayed on the Notice Board.

8. The said workman filed his own affidavit in evidence at Exb. 9. It appears from the affidavit that due to sickness of his wife and son he could not attend his duty in the month of November, 2003. He had given information in this regard to Party II. By letter dated 29-1-2004 he requested the Party II to allow him to resume his duty. This letter was supported by medical certificates of sickness of his son and wife. The Party II turned down his request. Under letter dated 19-2-2004 the Party II informed him that his dues are settled and thereby terminated his services.

9. The Party II filed affidavit of its General Manager, M. J. Caeiro in evidence at Exb. 20. According to him, the said workman remained absent from duty with effect from 1-11-2003 without prior permission or intimation. Therefore the Party II sent letter on 29-11-2003 and informed the said workman that the said workman is absent from duty for more than 10 days without prior permission or intimation. The Party II by this letter further informed the said workman to report on duty within next ten days and to explain to satisfaction of the Party II, reason for remaining absent, failing which the said workman would be deemed to have left the services of the Party II with effect from 1-11-2003 in terms of Rule 13(5) of the House Rules/Service Rules. The said workman did not report on his duty within given time as a result the said workman is deemed to have left the services with effect from 1-11-2003 in terms of the said Rule 13(5). There is no termination of the services of the Party I by the Party II.

10. Burden of proof to establish that the employer has terminated services is on the said workman who is putting forward the claim. The said workman was absent from his duty with effect from 1st November, 2003. The Party II has produced letter dated 29-11-2003 at Exb. 18. This letter was sent to the said workman by registered post A/D. Receipt whereunder the letter was sent by Registered post A/D is along with this letter. Evidence of the General Manager supported by recitals from this letter makes it clear that the Party II by this letter informed the said workman that the said workman is absent from duty without prior permission or intimation with effect from 1-11-2003 and that the Party II called upon the said workman to report on duty within next 10 days and to explain to satisfaction of the Party II the reason for absence, failing which the said workman shall be deemed to have left the services of the Party II with effect from 1-11-2003.

11. The said workman did not report on his duty within time given under letter dated 29-11-2003 (Exb. 11). Therefore the Party II by letter dated 19-2-2004 sent to the workman account payee cheque of Rs. 37,946.35 ps. towards final settlement of dues consisting of leave wages and gratuity. Copy of the letter along with postal acknowledgment receipt is produced at Exb. 17. This letter dated 19-2-2004 does not speak as to whether the Party II terminated service of the said workman or as to whether the said workman because of his unauthorized absence is deemed to have left services. Concise Oxford Dictionary meaning of "terminate" is to bring or to come to an end. If the two letters dated 29-11-2003 (Exb. 18) and dated 19-2-2004 (Exb. 17) are read together, net result which emerges therefrom is that because the said workman did not resume his duty within the time given under the letter dated 29-11-2003 (Exb. 18) and did not explain to satisfaction of Party II reason for his absence, he is deemed to have left the services with effect from 1-11-2003 resulting into final settlement of dues which were payable to the said workman as stated in the letter (Exb. 17). Such action on part of the Party II has certainly brought service of the said workman to an end which amounts to termination of service of the said workman. The letter dated 19-2-2004 (Exb. 17) does not speak about the date from which the said workman is deemed to have left the services of the Party II. Since the dues which were payable to the said workman came to be finally settled under letter dated 19-2-2004, I hold that the Party II terminated services of the said workman with effect from this date. I, therefore, answer the issue in affirmative.

12. *Issue No. 2:* The Party II terminated services of the said workman on the grounds that the said workman was unauthorisedly absent from his duty and that inspite of letter dated 29-11-2003 (Exb. 18) the said workman did not join his duty within next ten days and did not furnish reason to satisfaction of the Party II for his absence. The termination is in accordance with provision contained in Rule 13(5) of the House Rules produced at Exb. 19. It becomes necessary to have reference of this Rule 13(5) which reads as follows:

> *"(5) A workman absenting from work without any prior permission or intimation for a period of ten consecutive days, the management shall send a communication to that effect, informing him about his absence at his last known address by registered post and if the workman within the next ten days does not report for duty and explain to the satisfaction of the Manager the reason for his absence then the workman shall be deemed to have left the services from the date of his absence."*

13. Representative of the said workman pointed out in his argument that the Rule 13(5) of the House Rules does not give opportunity to the workman of hearing. Such Rule is arbitrary, unjust and unfair. Therefore, according to him, the termination of service based on such Rule cannot be said to be legal and just. He relied upon decision given by the Hon'ble High Court of Allahabad in case of *Narendra Pal Gahlot and others v/s State of U. P. and another reported in 1994 LLR 21.* The Hon'ble High Court of Allahabad held in this case that if this standing orders are interpreted in the way that no opportunity of hearing is required to be given, it shall become arbitrary, unjust and unfair and violative of Article 14 of the constitution.

14. The above argument advanced by representative of the said workman can easily be dispelled if I make reference of recent decision given by the Hon'ble Supreme Court in case of *D. K. Yadav v/s J.M.A. Industries Ltd., reported in [1993 (2) LLN 575]* and which is referred by the Hon'ble High Court of Bombay in case between *New India Co-operative Bank Ltd., and another and Shankar B. Bangera and another, reported in 2007 (1) LLN 915.* The Hon'ble Surpreme Court held in D. K. Yadav's case that-

> *"observance of the principles of natural justice has to be implied into certified standing orders which confer upon the employer a right to take adverse action against the employee inter alia on the ground of absence."*

15. In the present case if the Rule 13(5) of the House Rules (Exb. 19) is read as it is, it becomes apparent therefrom that this rule gives opportunity to the employee to resume his duty within next ten days from receipt of communication in writing from the employer and also to explain to satisfaction of the employer reasons for his absence. Therefore, and relying upon decision given by the Hon'ble Supreme Court in *D. K. Yadav's case* I hold that the said Rule 13(5) of the House Rules cannot be said to be arbitrary, unjust and unfair. I do not accept argument advanced in this regard by representative of the said workman.

16. It appears from affidavit filed by the said workman in evidence (Exb. 9) that the Party II did not take permission of the appropriate Government and did not follow provisions of the said Act, 1947 before terminating his services. Therefore, termination of his service by Party II is illegal and unjust. As against this General Manager of the Party II comes with a case in affidavit (Exb. 20) that the said workman has put an end contract of employment by remaining absent with effect from 1-11-2003 without prior permission or intimation for more than ten days. The said workman is deemed to have left services in terms of Rule 13(5) of the House Rules (Exb. 19), and therefore, neither permission from the

appropriate Government nor compliance with provisions contained in the said Act, 1947, is necessary.

17. Representative of the said workman argued that there were near about 250 workers in establishment of the Party II in the month of November, 2003. Therefore, the Party II is an industrial establishment. Provisions contained in Chapter V-B of the said Act, 1947 are applicable to the Party II. It was necessary for Party II to give three month's notice in writing and to take prior permission of the appropriate Government that is of the Government of Goa as required under Section 25 N of the said Act, 1947 before terminating services of the said workman. Nothing such has been done by the Party II. Therefore, according to him, termination of services of the said workman by the Party II is illegal and unjustified. He relied upon decision given by the Hon'ble High Court of Bombay in case between *Cricket Club of India and others and Employees' State Insurance Corporation and others, reported in 1998 III LLJ 270* to show that the Party II is an industrial estate. It appears from facts of this reported case that the Regional Director of Employees' State Insurance Corporation addressed communication to the Club calling upon to register the Club as a factory under the Act by filling return in the form prescribed under the Act. The Club resisted registration under provisions of the Act on the ground that the Club is not an industrial or commercial establishment or a factory and consequently it is not open for the Director to compel the Club to get registered under the Act. The Director informed the Club that kitchen run by the Club falls within the definition of factory under Section 2(12) of the Act, and the Club had engaged services of more than 20 employees in the kitchen where manufacturing process is carried out with or without the aid of power. The Director also informed that the catering services rendered by the Club are essential services for the existence of the Club and consequently the entire Club is required to be treated as a factory and the Club should be registered. The Club entered into correspondence denying the claim and there upon the Director served notice of demand calling upon the Club to produce all necessary records comprising of attendance register, wage register, cash books, ledgers, etc. This action of the Director gave rise to filling of the petition by the Club. Catch words of decision given by the Hon'ble High Court of Bombay in this reported case are as follows:

> *"Employees' State Insurance Act, 1948 Secs. 2(12) and 2(14-AA) Factories Act, 1948 Sec. 2(k) Meaning of 'factory' and 'manufacturing process' Preparation of food in kitchen amounts to manufacturing process Kitchen is integral part of (cricket) club activities All employees engaged by club had to be registered under Act and were covered by its welfare provisions:"*

18. Facts of the above reported case are totally different from that of the present one. With respect I am of the opinion that decision from this reported case is not applicable to prove that the Party II which is running the hotel business is an industrial establishment as defined under Section 25 L(a) of the said Act, 1947. This Section for purposes of Chapter V-B of the said Act, 1947 defines Industrial establishment as follows:

> *"(a) Industrial establishment means—*
>
> *(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);*
>
> *(ii) a mine as defined in clause (j) of sub--section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or*
>
> *(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);*

19. Definition of the expression 'factory' led down by Section 2(f) of the Factories Act, 1948 specifically provides that it shall not include a hotel, restaurant or eating place. To set the question at naught as to whether the Party II is an industrial establishment I can do no better than to make reference of decision given by the Hon'ble High Court of Bombay in case of *Lal Bavta Hotel aur Bakery Mazdoor Union and Ritz (Private) Ltd., another, reported in 2007 (2) LLJ 810* and which is placed before me by learned advocate of the Party II. The Hon'ble High Court of Bombay held in this reported case that–

"The statutory definition of the expression "factory" provides firstly what the definition means and secondly what it does not include. Once a hotel, restaurant or eating place is deemed by the statute as not to be included within the definition of the expression "factory" such an establishment shall stand excluded from the definition. In these circumstances, the establishment of Ritz Hotel being a hotel would not fall for classification as a factory under S. 2(m) of the Factories Act, 1948 and as a result would not be an industrial establishment for the purposes of Chap. V-B of the Industrial Disputes Act, 1947.

20. Decision given by the Hon'ble High Court of Bombay in the above reported case is squarely applicable to that of the present one. Relying upon this decision, I hold that the Party II is not an industrial establishment for the purposes of Chapter V-B of the said Act, 1947.

21. As per provision contained in Section 25 K of the said Act, 1947, provisions of Chapter V-B are applicable to an industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding twelve months. General Manager of Party II admitted in his cross examination that 250 workers were working in establishment of Party II in the month of November, 2003, and that, more than 100 workers are appointed in establishment of the Party II after the month of November, 2003. There is no evidence either on behalf of the said workman or of the Party II to show that at least 100 workmen were employed on an average per working day for the preceding twelve months. Apart from this, since the Party II is not an industrial establishment as defined under Section 25-L(a), I hold that provisions of Chapter V-B of the said Act, 1947 are not applicable to the Party II. It was not necessary for the Party II to comply with provisions contained in Section 25 N of the said Act, 1947 before terminating services of the said workman. Argument advanced by representative of the said workman must fall to the ground. I agree with argument advanced by learned advocate of the Party II.

22. Next submission which is pressed into service by representative of the workman is that the said workman was permanent in the service in establishment of the Party II. Termination of services of the said workman on the ground of unauthorized absence amounts to retrenchment as defined under Section 2(oo) of the said Act, 1947. The Party II before terminating services of the said workman neither held departmental inquiry nor issued show cause notice against the said workman. Opportunity is not given to the said workman to explain about unauthorized absence. Principle of natural justice is not followed by the Party II. Further, the Party II did not give one month's notice and did not pay retrenchment compensation to the said workman, as provided under Section 25 F of the said Act, 1947. Therefore, he submitted that termination of services of the said workman is illegal and unjustified. He relied upon decisions from various reported cases which now I am going to refer.

23. The Hon'ble Supreme Court held in case between *State Bank of India and N. Sundaramoney, reported in 1976 I LLJ 478 that-*

> *"Retrenchment" is no longer terra incognita but area covered by an expensive definition. It means, "to end, conclude, cease" in the present case, the employment ceased, concluded ended on the expiration of nine days automatically, may be, but cessation all the same. To write into the order of appointment the date of termination confers no moksha from S. 25F (b) is inferable from the proviso to S. 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract S. 25F and automatic extinguishment of service by effluxion of time cannot be sufficient.*

24. Facts of the above reported case of *State Bank of India* are clearly different from that of the present one. Therefore, with respect I am of the opinion that the decision reproduced above and which is relied upon by representative of the said workman is not applicable to the present case.

25. The Hon'ble High Court of Punjab and Haryana held in case of *Sita Ram, Petitioner v/s the Presiding Officer, Labour Court, Patiala and others respondents, reported in 1995 LAB I. C. 2446* that, termination of service on ground of absence constitutes termination for misconduct which amounts to retrenchment. It is further held that since the procedure under Section 25 F was not followed before terminating services of the petitioner workman, the action of the respondent employer was unjust.

26. Facts of *Sita Ram's* case referred to above do not show as to whether termination of service on ground of absence was in terms of certified standing orders if any of the employer. It was admitted position that the termination of services of the petitioner workman was by way of punishment and was not inflicted after holding an inquiry within the meaning of Section 25 F of the Act. In the present case termination of service of the said workman on the ground of unauthorized absence is stated to be in terms of Rule 13 (5) of the House Rules (Exb. 19) of the Party II. In view of these distinguishable facts with respect, I am of the opinion that decision from *Sita Ram's* case is not applicable to support argument advanced by representative of the Party I.

27. In case of *Uptron India Ltd., Petitioner v/s Shammi Bhan and another, respondents, reported in 1998 I CLR 1043,* respondent who was permanent employee of the petitioner was on maternity leave upto 29-1-1985. She remained absent upto 12-4-1985 without application for leave. By order dated 12-4-1985 the petitioner informed respondent that her service stood automatically terminated in terms of clause 17(g) of Certified Standing Order. On reference of dispute the Industrial Court set aside the termination by observing that it was illegal termination. This finding was confirmed by the Hon'ble High Court. The petitioner took up the matter by way of special leave to appeal to the Hon'ble Supreme Court. It is held by the Hon'ble Supreme Court that–

> *"It is now well settled that the services of a permanent employee, whether employed by the Government or Government company or Government instrumentality or statutory corporations or any other "Authority" within the meaning of Art. 12, cannot be terminated abruptly and arbitrarily, either with or without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the certified standing orders.*

28. The Hon'ble Supreme Court in the above reported case held that the termination of the respondent is retrenchment. Facts of this reported case are similar to that of the present one. I, therefore, hold that decision from this reported case supports the argument advanced by representative of the said workman that services of the workman cannot be terminated without giving opportunity to the workman.

29. In case of *ANZ Grindlays Bank v/s General Secretary, Grindlays Bank Employees Union and Others, reported in 2001 LLR 428,* the employee was in service from 19-3-1990 continuously till termination. On reference of the dispute pertaining to termination, Industrial Tribunal held the termination to be retrenchment and illegal and directed reinstatement of the employee with full back wages. Management challenged the Award by filling Writ Petition. The Hon'ble High Court of Bombay held that-

> *"Even though the petitioner bank has omitted to use the term of retrenchment, it is clear from the termination order that it was a case of retrenchment as the concerned workman was found surplus as there was no work for him, that the entire Section 25 F is mandatory Section which must be complied with and that it was obligatory for the petitioner to comply with Section 25 G of the Act, and Rule 81."*

30. Facts of the above reported case of *ANZ Grindlays Bank* are also clearly distinguishable. Therefore with respect I am of the opinion that decision from this reported case is not applicable to the present one.

31. To counter argument advanced by representative of the said workman, learned advocate of Party II argued that the said workman was absent from duty without prior permission or intimation. Inspite of letter dated 29-11-2003 (Exb. 18) the said workman neither reported to duty nor submitted explanation about the absence to satisfaction of the Party II. Therefore, the said workman is deemed to have left the services in terms of Rule 13(5) of the House Rules. It was for the said workman to explain satisfactorily about the absence from duty. Nothing such has been done by the said workman. Termination on ground of unauthorized absence does not amount to retrenchment as defined under Section 2(oo) of the said Act, 1947. The Party II by sending letter dated 29-11-2003 (Exb. 18) had given sufficient opportunity to the said workman to submit explanation before the said workman is deemed to have left the services. The Party II did not take benefit of the opportunity. By giving opportunity under the letter dated 29-11-2003 the Party II has followed principle of natural justice. Since the said workman is deemed to have left the services in terms of Rule 13(5) of the House Rules (Exb. 19) it was not necessary for the Party II to hold the departmental inquiry against the said workman. Action taken by the Party II whereunder services of the said workman are brought to an end is legal and justified. Therefore, he urged to turn down argument advanced by representative of the said workman. He also relied upon decisions from various reported cases which I am going to refer.

32. The Hon'ble High Court of Karnataka held in case between *North West Karnataka Road Transport Corporation and S. J. Fernandes reported in [2001 (89) FLR 813]* that the burden lay heavily on the employee to justify the absence or to mitigate the circumstances under which he was absent.

33. In the present case it appears from affidavit of the said workman (Exb. 9) that because of sickness of his wife and son he could not attend his duty in the month of November, 2003. Therefore, and relying upon decision given by the Hon'ble High Court of Karnataka in the reported case referred to above, I hold that burden lies upon the said workman to prove the circumstances resulting into his absence from duty. Though the affidavit is showing that he had given information to the Party II that he could not attend his duty due to sickness of his wife and son there is no corroboration in the form of documentary evidence in this regard. It can presumably said that he unauthorisedly remained absent from duty. It appears from cross examination of General Manager who is examined for and on behalf of the Party II that, the said workman by giving reply on 4-3-2004 to the letter dated 19-2-2004 sent by the Party II informed the Party II that he could not attend his duty due to sickness of his wife and son. It is pertinent to note that this reply is sent by the said workman after the Party II finally settled dues consisting of leave wages and gratuity which were payable to the said workman, under letter dated 19-2-2004 and that too after he is deemed to have left his services. It is after thought step taken by him. The General Manager admitted in his cross examination that the medical certificate which was submitted along with reply dated 4-3-2004 by the said workman was not challenged by the Party II. The said certificate is not produced by the said workman on record of the present reference. Even for the sake of argument assuming that, wife and son of the said workman were suffering from sickness, this is not a reason which would prevent the said workman from informing the Party II of his inability to attend duty and asking for leave. The reason which is put forth by the said workman to justify his absence from the duty does not appear to be probable, convincing and trustworthy and as such it does not merit consideration. I, therefore hold that, he failed to justify circumstances under which he was absent from the duty.

34. The Hon'ble High Court of Karnataka held in para No. 5 of the judgment delivered in case between *Management of Guest Keen Williams Ltd., and Presiding Officer, II Addl. Labour Court, Bangalore & another, reported in 1992 I LLJ 849* and which is pointed out before me by learned advocate of the Party II that-

> *"Where by the continuous absence without permission Standing Order Clause 20 deems voluntary abandonment it cannot be said that the Management had discharged or put an end to the services of the workman and therefore it is a case of retrenchment."*

35. In the present case the said workman due to his unauthorized absence and due to failure on his part to resume duty within time given under letter dated 29-11-2003 (Exb. 18) and also due to failure to submit explanation regarding his unauthorized absence, is not only deemed to have left the services but in addition to this the Party II finally settled dues which were payable to the said workman and thereby brought services of the said workman to an end amounting to termination. These facts are clearly distinguishable from that of the reported case of *Management of Guest Keen Williams Ltd.* With respect, I am of the opinion that, decision from this reported case is not applicable to the present one.

36. In case between *Hindustan Paper Corporation and Purnendu Chakrabarty and others reported in 1997 (2) LLN 1007* the respondent had proceeded on leave without prior sanction and remained absent unauthorisedly for more than six months consecutively. The corporation issued communication calling upon the respondent to explain. The respondent however did not avail himself of the opportunity but replied in a half-hearted way which resulted in deeming that he has lost his lien under relevant rules. The Hon'ble Supreme Court held that in these circumstances it could not be said that the principles of natural justice had not been complied with as contemplated under Rule 25.

37. The Hon'ble High Court of Bombay held in case of *Infomedia India Ltd., v/s Suhas Shripad Godre and another, reported in 2006 (6) ALL MR 580 that–*

> *"the requirements of natural justice must be read into the provisions of the Certified Standing Orders. The Certified Standing Orders have Statutory flavour under the Industrial Employment Standing Orders Act, 1946. Where the civil rights of an individual are adversely affected, the requirement of fairness warrants that an opportunity consistent with the principles of natural justice should be given to him. Now, an opportunity in a manner which is*

consistent with the principles of natural justice does not necessarily warrant the holding of a full-fledged departmental enquiry. What is required is an opportunity to enable an employee to furnish any explanation he may have for explaining his absence without leave. An employee may have a justifiable reason for absence from duty beyond the period of leave. It is not necessary for court to catalogue exhaustively the circumstances in which that may be the case. It would however suffice to note that the law contemplates as an incident of the requirement of fair treatment that at least a notice should be given to an employee so that he would have an opportunity to explain why he was absent from work."

38. In case of *Viveka Nand Sethi v/s Chairman, Jammu and Kashmir Bank Ltd., and others reported in [2005 (3) LLN 57]* a bipartite settlement between the bank and its employees provided that where the employee was absent from work for ninety days or more, the management had to give a notice calling him to report for duty within thirty days. Unless the employee reported for duty within that period or furnished an explanation justifying his absence to the satisfaction of management, he was deemed to have voluntarily retired from the service. The Hon'ble Supreme Court held in para No. 20 of judgment that-

"it may be true that in a case of this nature the principles of natural justice were required to be complied with but the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited inquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view amounts to sufficient compliance with the requirements of the principles of natural justice."

39. Facts from the reported case of *Viveka Nand* and the decision given by the Hon'ble Supreme Court which is reproduced above are referred by the Hon'ble High Court of Bombay in case between *New India Co-operative Bank Ltd., and another and Shankar B. Bangera and another, reported in 2007 (1) LLN 915. In* this reported case respondent employee was terminated from service for remaining absent for more than seven months without authorization and for not resuming duty and treating the same as abandonment. Labour Court held the termination illegal as no disciplinary enquiry was conducted and as there was no compliance with principles of natural justice. The Labour Court directed reinstatement of the respondent employee. The employer bank challenged award passed by the Labour Court by filing Writ Petition. The Hon'ble High Court of Bombay held that the employer was required to give reasonable opportunity to the employee to report for work or to explain his absence which has been done by the employer. The Hon'ble High Court further pleased to hold that the award of reinstatement cannot be sustained.

40. Decisions given by the Hon'ble Supreme Court in case of *Hindustan Paper Corporation,* by the Hon'ble High Court of Bombay in case of *Infomedia India Ltd.,* and in case of *New India Co-operative Bank Ltd., and another,* alluded supra are squarely applicable to the present case. The Party II by sending letter dated 29-11-2003 (Exb. 18) had given opportunity to the said workman to resume his duty within next ten days and to furnish reason to its satisfaction for his absence. The said workman did not avail of the said opportunity. Therefore, and relying upon decisions given by the Hon'ble Supreme Court in case of *Hindustan Paper Corporation,* and by the Hon'ble High Court of Bombay in case of *Infomedia India Ltd.,* and in case of *New India Co-operative Bank Ltd., and another,* referred to above, I hold that, the Party II has followed principle of natural justice and that it was not necessary for the Party II either to comply with provisions contained in Section 25 F of the said Act, 1947 or to hold departmental enquiry before terminating services of the said workman. The termination of services of the said workman is in accordance with Rule 13(5) of the House Rules (Exb. 19) which has statutory flavour and as such it is legal and justified. The argument advanced by representative of the said workman must fail. I, therefore, answer the issue in affirmative.

41. *Issue No. 3:* According to the said workman his services are terminated by the Party II. Contrary to this, it is stand of the Party II that the said workman has abandoned services by remaining absent from duty without prior intimation to or without permission of the Party II. Learned advocate appearing on behalf of the Party II further argued that the Government of Goa has referred the dispute for adjudication on the basis that services of the said workman are terminated. The dispute as to whether there is abandonment of service by the said workman is not referred for adjudication. The reference does not reflect the real dispute. Therefore, according to him, the dispute is bad in law. To substantiate his argument he relied upon decisions given by the Hon'ble Supreme Court in case between *Moolchand Kharati Ram Hospital K. Union and Labour Commissioner and Company, reported in 2001 (1) LLN 920* and by the Hon'ble High Court of Bombay incase between *Sitaram Vishnu Shirodkar and the Administrator, Government of Goa and other.*

42. In case of *Moolchand Kharati Ram Hospital K. Union* there was reference by the Government, of dispute regarding entitlement of workman to wages for period of lockout. Management filed Writ Petition for quashing of reference on ground that real dispute as to whether there was a lockout was presumed and the consequential question was referred but not the basic question. It was stand of the management that there was no lockout. The Hon'ble Supreme Court held that the dispute actually referred did not reflect the real dispute between the parties, and therefore, pleased to quash the reference.

43. In case of *Sitaram Vishnu Shirodkar* dispute raised by workman was that his services were terminated by management. It was contention of the management that the workman remained absent and abandoned job. Government referred the disputes for adjudication on the basis that the services of the workman were terminated. The Hon'ble High Court held

that the reference is bad because it does not reflect the real dispute.

44. In the present case also dispute raised by the said workman is that his services are terminated by the Party II. It is contention of the Party II that the said workman has abandoned his services by remaining absent on duty unauthorisedly. Therefore, the argument advanced by learned advocate of the Party II and supported by decisions from the reported cases referred to above appears to be probable. The Party II in para No. 1 of its written statement (Exb. 5) came with specific case that there is no termination of service of the said workman, and therefore, the reference is itself illegal and bad in law. The ground pressed into service by learned advocate of the Party II and which is stated above to challenge the reference does not find place in the written statement. Only on this ground, I hold that, it will not be proper and correct to accept the argument advanced by learned advocate of the Party II.

45. It is proved that services of the said workman are terminated by the Party II. The appropriate Government that is the Government of Goa was of the opinion that an Industrial Dispute exist between the parties in respect of termination of services of the said workman. Therefore, it has referred the dispute for adjudication to the Labour Court II as per provisions contained in Section 10(1)(c) of the said Act, 1947. In view of this position and above discussion, I do not accept argument advanced by learned advocate of the Party II. My answer to the issue is in negative.

46. *Issue No. 4:* As per provisions contained in Section 11 A of the said Act, 1947. If the Industrial Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

47. The said workman in the present case failed in proving that the termination of his service by the Party II is illegal or unjust. Considering his conduct, I am not satisfied that termination of his service is not justified. In view of this position and of findings given to the issues No. 2 and 3, I answer the issue in negative.

As a result of findings given to the issues No. 2 to 4, I proceed to adjudicate the dispute by passing order as follows:

ORDER

1 It is hereby adjudicated that the action of the management of M/s. Cidade de Goa, unit of M/s. Fomento Resort and Hotel Limited, Dona Paula, Goa (Party II) in terminating the services of its workman, Shri Surendra Naik, Resort Attendant (Party I) with effect from 19-2-2004, is legal and justified.

2 It is hereby adjudicated that the workman (Party I) is not entitled to any relief.

3 No order as to costs.

4 The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/01/2008-LAB/199

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 24-01-2008 in reference No. IT/112/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 7th February, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/112/99

Workmen Rep. by
The President,
Marmagoa Steel Employees Union,
C/o House No. 447,
Macazana, Curtorim,
Salcete, Goa. ... Workmen/Party I

V/s

M/s. Marmagoa Steel Limited,
280, Eclate,
Curtorim,
Salcete, Goa. ... Employer/Party II

Party I/Workmen are represented by Adv. A. V. Nigalye.

Party II/Employer is represented by Adv. G. K. Sardessai.

A WARD

(Passed on this 24th day of January, 2008)

This is a reference under Section 10(2) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(2) of the said Act, 1947, under order dated 30-6-99, has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the workmen represented by the Marmagoa Steel Employees Union are entitled

to receive from M/s. Marmagoa Steel Ltd., Curtorim, balance 8 days wages for the suspension of work operation/declared lockout from 27-2-1999 (third shift) to 17th March, 1999, in view of the fact that the Management has already paid wages for 10 days during the said period ?

(2) If not, to what relief the said workmen are entitled ?"

2. In response to notices both parties put their appearance in this Industrial Tribunal. The Party I presented its claim statement on 25-1-2000 at Exb. 4. It appears from claim statement that the Party II is a company incorporated under provisions of the Companies Act, 1956. It has registered office at Curtorim, Salcete, in the State of Goa. There are near about 200 workmen in its establishment. The Marmagoa Steel Employees Union is duly registered under the Trade Unions Act, 1926 (in short, the said Union). All the workmen on whose behalf dispute is raised under the present reference by the said Union are its members. There was dispute between the workmen represented by the said Union on one hand, and the Party II on the other, in respect of terms and conditions of service of the workmen, unfair labour practice committed by the Party II, unsafe and unhygienic conditions of employment and harassment and victimization including suspension and dismissal of some workers etc. The Party II suspended operation of work and did not allow any of the workmen to enter in its factory with effect from 3rd shift on 27-2-1999. Suspension of operation of the work was without any reason and it was infact lockout. The workmen neither participated in any violent activity nor indulged in go-slow tactics. The workmen, after the Party II declared lock-out, raised industrial dispute before the Deputy Labour Commissioner, Margao. The workmen and the Party II arrived at settlement under Section 12(3) during conciliation proceeding on 17-3-1999. It was agreed between the parties to the settlement that the Party II shall lift the lock-out and the workmen shall report to their duties from first shift of 18-3-1999, that the Party II shall pay to the workmen wages of ten days out of the period from 27-2-99 to 17-3-99, and that, the workmen and the Party II shall make joint reference in respect of wages of the remaining period of eight days out of the period of lock-out which was from 27-2-99 to 17-3-99. The Party II also agree to revoke dismissal of five workmen who were dismissed without enquiry and to place them under suspension pending the enquiry. Pursuant to the settlement both parties made joint reference to the Government under Section 10(2) of the said Act, 1947, as a result, the Government of Goa has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

3. According to the Party I/the said Union, suspension of work/lockout declared by the Party II is illegal and unjustified. Suspension of work/lock-out was in violation of Certified Standing Order of the Party II. The workmen are entitled to full wages of the remaining eight days out of the period from 27-2-1999 to 17-3-1999 during which they were refused employment. Therefore the Party I/the said Union has prayed for declaration that the workmen are entitled to receive from the Party II full wages of the said eight days with interest at the rate of Rs. 15% per annum from 1-4-99 until the date of payment.

4. The Party II presented written statement on 15-3-2000 at Exb. 5. Averments from the written statement go to show that the Party II is running business of manufacturing steel and roll products in its factory situated at Curtorim, Goa. The Party II had severe set-back from its inception. Due to failure of power transformer, commencement of commercial activities was required to be postponed. This was followed by non-implementation of power subsidy scheme which was effective from December, 1991 but which came to be enforced from the month of August, 1996 resulting in depriving the Party II from actual benefits under the scheme. Even though the Party II was facing several problems including that of financial in the year 1994 the Party II maintained harmonious industrial relations by signing long terms settlement upto 31-3-1997 with the Union. The workmen formed separate Union in the name of Marmagoa Steel Employees Union in the month of December, 1996 and then submitted Charter of Demands under letter dated 14-4-1997. The Party II and the Union representing the workmen arrived at settlement under Section 12(3) read with Section 18(3) of the said Act, 1947. This settlement was for a period of three years. The Party II substantially increased emoluments of the workmen who in turn agreed and assured to achieve production target regularly by extending full co-operation to the management. Though the settlement was with effective from 1-4-1997, it was further agreed that the wage revision will be effective from 1-1-1998, and that, the lump sum amount will be paid as full and final settlement for the period from 1-4-1997 to 31-12-1997. Accordingly the Party II has paid arrears to the workmen. The Union again placed fesh Charter of Demand in the month of November, 1998 to pay difference of overtime for the period from 1-4-1997 to 31-12-1997. The fresh Charter of Demand placed by the Union was not justified. However, with intention to maintain peace and healthy atmosphere the Party II agreed to make the said payment by 24-2-1998. Since the Party II was passing through financial difficulties it could not make the payment with the agreed time. The Party II displayed notice dated 22-3-1997 in this regard on notice board. The workmen began to go-slow in work and to disturb total production in factory of the Party II with effect from 2nd shift on 24-2-1999. They man-handled executives of the Party II. Therefore the Party II was compelled to declare lock-out/suspension of operation with effect from 27-2-1999. The workmen did not actually work during the period from 27-2-1999 to 17-3-1999. On principle of "No work No pay" they are not entitled to wages of this period. The lock-out/suspension of work declared by the Party II was fully justified. The reference is bad in law. On these and above grounds the Party II has prayed for rejection of the reference.

5. The Party II amended the written statement on 4-10-2007 and pleaded that, order of reference does not refer for adjudication of substantive issue as to whether lock-out declared/suspension of work is legal or illegal, and therefore in absence of reference of such substantive

issue - this Industrial Tribunal cannot decide legality of the lock-out/suspension of work. Demand of wages for the period of lock-out/suspension of work is only consequential and not substantive. Terms of reference show that only the dispute for adjudication to this Industrial Tribunal is as to whether wages of eight days have to be paid because ten days wages are paid under the settlement.

6. The Party I did not file rejoinder.

7. On basis of pleadings, the then Learned Presiding Officer framed issues on 4-7-2000 at Exb. 6. The issues are recast by me on 31-8-2007 at Exb. 9. Parties to the dispute did not lead evidence after recasting of the issues which are as follows:

1 Whether the reference is bad in law ?

2 Does the Party I prove that the suspension of work/lock-out declared by the Party II during period from 27-2-1999 to 17-3-1999 is illegal ?

3 Does the Party I prove that the workmen represented by it are entitled to wages of balance eight days from 27-2-1999 to 17-3-1999 ?

4 What Award ?

8. My findings on the above issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: In the affirmative.
Issue No. 3: In the affirmative.
Issue No. 4: As per final order.

REASONS

9. *Issue No. 1:* Pleadings set out in para No. 1 of written statement (Exb. 5) speak that the workmen represented by the said Union did not actually work during period of the lock-out/suspension of work, that is, during period from 27-2-1999 to 17-3-1999, that, on principle of "No work No pay," the workmen are not entitled to wages of the said period, and that, the lock-out/suspension of work declared by the Party II was justified, as a result, the reference is bad in law. Argument advanced by learned advocate of the Party II is on the same line.

10. It is not in dispute that the workmen did not actually work during period of the alleged lock-out/ /suspension of work. Pursuant to settlement arrived at between the said Union representing the workmen on one hand, and the Party II on the other, as per provisions contained in Section 12(3) read with Section 18(3) of the said Act, 1947. The Party II has made payment to the workmen, of wages of ten days out of the period of the alleged lock-out/suspension of work. Dispute between the parties is only in respect of wages of remaining eight days out of the said period. According to the Party I, the lock-out/suspension of work declared during the said period by the Party II is illegal and therefore the workmen are entitled to wages of the said eight days also. The question as to whether they are entitled to such wages will have to be decided on merits. Obviously this question is on the reference which is made to this Industrial Tribunal for adjudication. Under these circumstances it cannot be said that the reference is bad in law. This is the first ground as a result I hold that the plea taken by the Party II and argument advanced by its learned advocate is unacceptable.

10. The Hon'ble Supreme Court held in case of *National Engineering Industries Ltd., Appellant v/s State of Rajasthan and others, Respondents, reported in (2000) 1 Supreme Court Cases 371* and which is relied upon by learned advocate of the Party I, that the Industrial Tribunal is the creation of a statute and it gives jurisdiction on the basis of reference. It cannot go into the question on the validity of the reference. In the present case also the reference is made by appropriate Government, that is, by the Government of Goa for adjudication of dispute. Relying upon decision given by the Hon'ble Supreme Court, I hold that plea raised by Party II in its written statement that the reference is bad in law cannot be accepted. This is one more ground because of which I do not agree with case made out by the Party II and also with argument advanced by its learned advocate. My answer to the issue is in negative.

11. *Issue No. 2:* Section 2(l) of the said Act, 1947, defines "lock-out" as follows:-

> *"lock-out means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any member of persons employed by them."*

The Hon'ble Supreme Court observed in case between *Kairbetta estate Kotagari and Rajamanickam and others, reported in 1960 II LLJ 275* and which is placed before me by learned advocate of the Party II that–

> *"lock-out can be described as the antithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the Act. Chapter V which deals with strikes and lock-outs clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised."*

12. Learned advocate of the Party II elaborately argued that, terms of the reference do not refer the dispute as to whether the lock-out/suspension of work declared by the Party II is legal, to this Industrial Tribunal for adjudication. If this question is looked into and same is decided that will amount in transgressing scope of the reference which is not permissible. Therefore, according to him, in absence of specific reference, the Industrial Tribunal cannot decide the question as to whether the lock-out/suspension of work declared by the Party II is legal. To substantiate his argument he relied upon decisions from reported cases which I am going to refer.

13. The Hon'ble Supreme Court held in case between *Pottery Mazdoor Panchayat and Perfect Pottery Company Ltd., and others reported in 1979 LLN 336* that –

> *"the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto, and the Tribunal cannot go beyond the terms of the reference made to it"*

In the above reported case the very term of the references where showing that the point of dispute between the parties was not the fact of closure of the business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management.

14. In case between *Maya Export Corporation and Secretary (Labour) and others reported in [2002(93) FLR 926]* lock-out was declared due to tactics of go-slow adopted by the workers. On raising of dispute question of entitlement of wage only was referred to the Industrial Tribunal for adjudication. The Hon'ble High Court of Delhi held that–

> *"Since the legality of the lock-out has not been referred to adjudication, it would not be open to the respondent to exercise powers under Section 10(3) of the Act, since this question had not been made the subject matter of the reference under Section 100(1)."*

The Hon'ble High Court of Delhi in the reported case relied upon decision given by it in case of *Delhi Administration v/s Workmen of Edward Keventers and another, reported in 1978 (37) FLR 116 (SC).*

15. In case of *Moolchand Kharati Ram Hospital Union Petitioner v/s Labour Commissioner and Co. Respondents reported in 2001 1 CLR 29* Industrial dispute which was between the hospital and the Union and which was referred for adjudication to the Tribunal was whether the workmen are entitled to wages for the lock-out period. The hospital filed Writ Petition to quash the reference as bad in law on the ground that the real dispute as to whether there was a lock-out was presumed and consequential question was referred but not the basic question. Hon'ble Single Judge allowed the Writ Petition after taking a view that the dispute actually referred did not reflect the real dispute viz. existence or otherwise of lock-out. Division Bench of the Hon'ble High Court confirmed the same. In appeal the Hon'ble Supreme Court held that, view of the High Court is justified.

16. In reply learned advocate of the Party I argued that, admittedly, the Party II declared lock-out/ /suspension of work with effect from 27-2-1999 which continued till 17-3-1999. Since the fact that there was such lock-out/suspension of work is admitted by the Party II itself in written statement, question of making reference of dispute as to whether there was lock-out/ /suspension of work, does not arise. This Industrial Tribunal can decide the question as to whether the alleged lock-out/suspension of work is legal or illegal. While deciding such question which is incidental, the Industrial Tribunal is not going beyond the scope of the reference. To support his argument he relied upon decisions from reported cases which are also required to be referred.

17. In case of *D.B.H. International Limited, Appellant v/s their workmen represented by the Transport and Dock Workers Union and another, Respondents reported in 2005 II CLR 679,* seven workmen were retrenched. Reference was made as to whether the retrenchment is justified. Industrial Tribunal held retrenchment to be justified but not legal. Against this decision of the Industrial Tribunal, Writ Petition came to be filed which is dismissed summarily. In writ appeal it was submitted that the Tribunal travelled beyond its scope as 'legality' of action of retrenchment was not within the scope of reference. The Hon'ble High Court Judicature at Bombay held that–

> *"though reference made by the Government is only regarding justifiability and not legality, but in view of peculiar facts of this, the Tribunal was justified in entering into question of legality also and the Tribunal cannot be said to have enlarged the scope of reference."*

18. In case of *Standard Chartered Grindlays Bank Ltd., Petitioners v/s Grindlays Bank Employees Union and others, Respondents, reported in 2002 I CLR 1017* reference was whether management is justified in transferring award staff to Resource Department, Management Centre (RMC). There were names of 33 workmen in claim statement. Because of subsequent transfers of two other lots, their names were sought to be added in claim statement. Industrial Court allowed the amendment. The petitioner filed the petition alledging that by amendment Industrial Tribunal has enlarged the scope of reference. The Hon'ble High Court of Judicature at Bombay held that –

> *"Respondent Union has challenged as a whole the action of the petitioner management to transfer the award staff to RMC, that, as such it cannot be said that by amendment, Union has sought any fresh industrial dispute and as such there is no illegality or inconformity in the order of the Tribunal to allow the amendment."*

19. Facts of the reported cases relied upon by learned advocate of the Party II as well as by learned advocate of the Party I are clearly distinguishable from facts of the present case. The Hon'ble Supreme Court held in case of *Delhi Cloth and General Mills Company Ltd., v/s Workmen reported in 1967–AIR (SC)–0-469* that the Industrial Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. The Hon'ble Supreme Court held in case of *Agra Electric Supply Co. Ltd., Agro v/s Workmen, reported in 1983-SCC-1-436* that, terms of the reference

respecting a dispute for industrial adjudication should be construed liberally and not pedantically, and that, the flexibility in the exercise of powers taking liberties with strict rights of parties is permitted to Tribunals.

20. In the present case, it is admitted fact that the Party II declared lock-out/suspension of work with effect from 27-2-1999 which lasted till 17-3-1999. Therefore, the question as to whether there was such lock-out/suspension of work and of reference of such dispute to the Industrial Tribunal for adjudication does not arise. When there is admitted fact that there was such lock-out/suspension of work, in my view, the question as to whether such lock-out/suspension of work is legal or illegal is incidental and such question can be decided by the Industrial Tribunal. I, therefore hold that, the argument advanced by learned advocate of the Party II must fail.

21. The lock-out/suspension of work declared by the Party II with effect from 27-2-1999 and which lasted till 17-3-1999 comes to be of eighteen days period. Parties to the dispute did not lead evidence. It follows that there is no evidence on behalf of the Party II also, to prove that the Party I raised a fresh Charter of Demand of overtime wages for the period from 1-4-1997 to 31-12-1997, that, because of non-payment of overtime wages of the said period within agreed time, workmen represented by the said Union began to go-slow in their work, disturbed total production in factory of the Party II, man-handled executives of the Party II, and that, because of these compelling circumstances the Party II declared the alleged lock--out/suspension of work. Even for the sake of argument assuming that there were such compelling circumstances behind declaration of the lock-out/suspension of work, question which needs to be decided as to whether such declaration of the lock-out/suspension of work can be said to be legal. To make position clear reference of Clause 23(a) of the Certified Standing Orders of the Party II becomes necessary. It lays down that –

> *"Workmen will not resort to strike and management will not declare lock-out without giving at least 14 days notice as the case may be."*

The above clause makes it mandatory on part of the workmen and also of management to give 14 days notice before resorting to strike or to declaration of lock-out as the case may be. In the present case, the Party II did not give 14 days notice before declaration of the lock-out/suspension of work. What the Party II has done is that it gave notice on the very day on which it declared lock-out/suspension of work. The Party II did not comply with provisions contained in Clause 23(a) of the Certified Standing Orders which have statutory flavour before declaration of the lock-out/suspension of work with effect from 27-2-1999. I, therefore, answer the issue in affirmative.

22. *Issue No. 3:* It is not explained by any of the parties as to why the Party II has paid to the workmen wages only of ten days out of the period of lock-out/ /suspension of work. In other words, reason for making payment of only of ten days wages is not known. Under this circumstance it will not be correct to hold that because the Party II has paid to the workmen wages of the ten days, the workmen are entitled to wages of the remaining eight days also.

23. The lock-out/suspension of work declared by the Party II is proved to be illegal. It follows that the Party II has illegally restrained the workmen from attending their duty which amounts to refusal of employment to the said workmen during period of lock-out/suspension of work. The workmen need to be compensated by way of making payment of their wages. I therefore answer the issue in affirmative.

24. The Party I has prayed for interest @ 15% per annum from 1-4-99 till the date of payment, on wages of the said eight days. The workmen did not actually work during period of the lock-out/suspension of work. Because the lock-out/suspension of work is proved to be illegal, they are entitled to get wages of the said eight days. I am not satisfied that it is the fit case in which interest can be awarded. I, therefore, hold that the workmen are not entitled to the interest.

As a result of above discussion and findings given to the issues No. 2 and 3, I proceed to adjudicate the reference by passing order as follows:-

ORDER

1 It is hereby adjudicated that the workmen represented by the Marmagoa Steel Employees Union, are entitled to receive from M/s. Marmagao Steel Ltd., Curtorim, balance 8 days wages for the suspension of work operation/ /declared lock-out from 27-2-1999 (third shift) to 17th March, 1999, in view of the fact that the lock-out/suspension of work is proved to be illegal, and not in view of the fact that the Management has already paid wages for 10 days during the said period.

2 No order as to costs.

3 The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
Dilip K. Gaikwad,
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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